

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

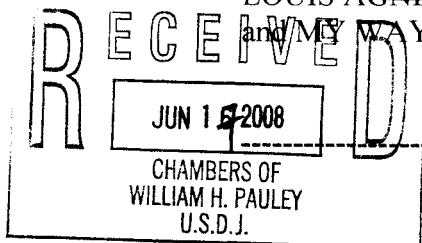
DOCTOR'S ASSOCIATES INC.,

Plaintiff,

- against -

LOUIS AGNELLO, COUSIN VINNY'S WAY
and MY WAY SUBS,

Defendants.



X

Case No. 08 Civ. 5452 (WP)

ORDER TO SHOW CAUSE

Upon reading the Complaint; the Declaration of John Musco, dated June 14, 2008; the Declaration of Dan Ribacoff, dated June 13, 2008; and the Memorandum of Law dated June 16, 2008;

LET the defendants Louis Agnello, Cousin Vinny's Way and My Way Subs, show cause at Room 110 of this Court, to be held in and for the Southern District of New York, at the Courthouse located at 500 Pearl Street New York, New York, on the 30th day of June, 2008, at 11:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, why the Court should not issue an Order:

1. Directing that Defendants, their officers, agents, servants, employees, attorneys, parents, subsidiaries and related companies, and all persons acting for, with, by, through or under them, be preliminarily enjoined and restrained from:
 - (a) Using, in any manner, the federally registered SUBWAY Marks (a schedule of which is annexed and made a part hereof), or any other term, terms or materials likely to cause confusion as to the source of

- origin of the SUBWAY Marks (i) as Defendants' trademark, service mark, trade name, or corporate identity; (ii) on or in connection with any goods or services sold, licensed, distributed or otherwise disseminated by or on behalf of Defendants ("Infringing Goods"); or (iii) in connection with the advertising or promotion of Defendants' goods or services;
- (b) Using, in any manner, unregistered trademarks and service marks used and owned by plaintiff Doctor's Associates, Inc. ("DAI"), such as \$5 FOOTLONG, or signs, menus and any other materials used in connection with operating a SUBWAY franchise ("SUBWAY Materials"), (i) as Defendants' trademark, service mark, trade name, or corporate identity; (ii) on or in connection with any Infringing Goods; or (iii) in connection with the advertising or promotion of Defendants' goods or services;
- (c) Using in any manner the SUBWAY Marks, DAI's unregistered marks, or SUBWAY Materials in connection with Defendants' goods or services in such a manner that it is likely to create the erroneous belief that said goods or services originate with, are authorized by, sponsored by, licensed by or are in some way associated with Plaintiffs;
- (d) Otherwise engaging in any other acts or conduct which would cause consumers to erroneously believe that Defendants' goods or services originate with, are sponsored by, authorized by, licensed by, or in any other way associated with Plaintiffs; or

(e) Copying, reproducing, distributing, or preparing any works that in any way reference the SUBWAY Marks, unregistered marks, or SUBWAY Materials.

2. Granting attorneys' fees and costs of this motion; and
 3. Granting such other and further relief as this Court shall deem just and proper;
- and it is

ORDERED, that Defendants, their officers, agents, servants, employees, attorneys, parents, subsidiaries and related companies, and all persons acting for, with, by, through or under them, be immediately enjoined, during the pendency of this action, from engaging in any of the conduct set forth in Paragraph 1, above; and it is

~~second, the day of June 2008,~~
ORDERED, that personal service of a copy of this Order, the papers upon which it is based and the summons and complaint upon the defendants or their attorneys on or before the 20th day of June 2008, be deemed good and sufficient service.

Ordered that Defendants
serve and file any
opposition papers by
June 27, 2008 at 12:00 p.m.

E N T E R:

William H. Parley III, U.S.D.J.

6/19/08